

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-00739
Petitioner: Jacquelyn Y. Collins
Respondent: Department of Local Government Finance
Parcel: 001-25-46-0594-0041
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held February 11, 2004. The Department of Local Government Finance (the DLGF) determined that the property tax assessment for the subject property is \$53,200 and notified the Petitioner on April 1, 2004.
2. The Petitioner filed a Form 139L appeal on April 28, 2004.
3. The Board issued a notice of hearing to the parties dated September 15, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on October 15, 2004.

Facts

5. The subject property consists of one unit of a row-type residence at 1117 Pyramid Drive, Gary. The location is in Calumet Township.
6. The Special Master did not conduct an on-site visit of the property.
7. Assessed value of subject property as determined by the DLGF:
Land \$9,400 Improvements \$43,800 Total \$53,200.
8. Assessed value requested by Petitioner:
Land \$9,400 Improvements \$27,900 Total \$37,300.
9. Persons sworn as witnesses at the hearing:
Jacquelyn Y. Collins, Owner,
Sharon S. Elliott, Staff Appraiser, Cole-Layer-Trumble.

Issues

11. Summary of Petitioner's contentions in support of alleged error in the assessment:
- a. There are fourteen identical units in the subject's neighborhood. Petitioner's property is the highest assessed unit of these properties. They should all have equal assessments. Each one has 308 square feet of garage area and 1,157 square feet of living areas. There are measuring errors and/or inconsistent estimates of the garage areas with some of the units. Petitioner admitted, however, that the measurements for her garage area are correct with 308 square feet. *Collins testimony; Petitioner Exhibits 1-8.*
 - b. All of the two-unit buildings are listed as average condition except for one unit that is listed in fair condition and the subject unit, which is listed in good condition. *Id.*
 - c. All of the units are graded C, except one unit that is graded D+2. All of these properties should be graded D+2. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, app. A at 9-14. If the units in Exhibit 12 are C grades, units such as the subject should be graded D+2. *Petitioner Exhibits 10, 11, 12; Collins testimony.*
 - d. The subject improvement only received a 20 percent neighborhood obsolescence factor, but twelve of the other like properties received a 45 percent neighborhood obsolescence factor and one even received a 65 percent factor. *Collins testimony; Petitioner Exhibits 1-8.*
 - e. Petitioner testified that she is familiar with the difference between attached and integral garages because she has been assessing property since 1991 and she is the Chief Deputy Assessor for Calumet Township. All of the garages on these identical properties should be priced as integral garages, not attached garages. GUIDELINES, ch. 3 at 13. "Many homes have garages with dimensions that are not easily measurable from the exterior because the area immediately behind the garage is a finished living space. In other types of homes, the living space may be on the floor above the garage. In either case, the garage is included in the base area calculation. After the dwelling is priced, the area of the integral garage is estimated using its car capacity and is deducted from the base area of the dwelling". *Collins testimony; Petitioner Exhibit 9.*
 - f. The Petitioner wants "to divide the \$27,900 improvement value of key # 0042 (parcel number 001-25-46-0594-0042) by its square footage which gives a \$23.54 per square foot price. Multiply the \$23.54 times the subject's square footage and add in the \$9,400 land value" to arrive at a new assessed value of approximately \$37,300. All of these identical units should have the same assessed value." *Collins testimony.*

12. Summary of Respondent's contentions:
- a. It is possible that errors were made in measuring the size of the garages on some of Petitioner's comparables. *Elliott testimony*.
 - b. The Guidelines cited by the Petitioner states that "integral garage has the following characteristics: part of the dwelling with living area on two or more surfaces" and "the living space may be on the floor above the garage". It also describes attached garages as having "one or more walls in common with the dwelling". For the purposes of this reassessment, it was determined that the type of garage contained in the subject was to be an attached garage. All of the fourteen units are priced as having attached garages. *Elliott testimony; Petitioner Exhibit 9*.
 - c. The assessed value of the subject is incorrect. The specific areas of grade, condition and neighborhood obsolescence factors were not addressed when figuring the total assessed value offered to the Petitioner prior to this hearing. The average time adjusted sale prices of three comparables properties indicates a proposed new assessed value of \$33,700. *Elliott testimony; Respondent Exhibit 3*.

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. The tape recording of the hearing labeled Lake 194,
 - c. Exhibits:
 - Petitioner Exhibit A – Summary of Petitioner's arguments,
 - Petitioner Exhibit B – Notice of Final Assessment,
 - Petitioner Exhibit 1 – Property record cards (PRCs) for parcels 46-0594-0001 and 46-0594-0042,
 - Petitioner Exhibit 2 – PRCs for parcels 46-0594-0002 and 46-0594-0003,
 - Petitioner Exhibit 3 – PRCs for parcels 46-0594-0004 and 46-0594-0005,
 - Petitioner Exhibit 4 – PRCs for parcels 46-0594-0006 and 46-0594-0007,
 - Petitioner Exhibit 5 – PRCs for parcels 46-0594-0014 and 46-0594-0015,
 - Petitioner Exhibit 6 – PRCs for parcels 46-0594-0017 and 46-0594-0018,
 - Petitioner Exhibit 7 – PRCs for parcels 46-0594-0019 and 46-0594-0020,
 - Petitioner Exhibit 8 – PRCs for parcels 46-0594-0021 and 46-0594-0041,
 - Petitioner Exhibit 9 – Page 13, Chapter 3 Real Property Assessment Guideline,
 - Petitioner Exhibit 10 – Pages 9-14, Appendix A, Quality Grade Specification Tables,
 - Petitioner Exhibit 11 – Pages 36-44, Appendix A, Photographs,
 - Petitioner Exhibit 12 – PRCs and photographs for parcels 46-0594-0022 and 46-0594-0023,

Respondent Exhibit 1 – Subject PRC,
Respondent Exhibit 2 – Subject photograph,
Respondent Exhibit 3 – Comparable sales,
Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign in Sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases and regulations are:
- a. A petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. There is sufficient evidence to require a change of the assessment. This conclusion was arrived at because:
- a. Both parties stated that the current assessed value of \$53,200 is incorrect.

Grade

- b. The Petitioner contends that all of the fourteen units would more accurately qualify as D+2 grade structures rather than C grade structures. Of the comparable properties submitted, only one is graded D+2. The lower grade for that one unit does not constitute probative evidence that the others, including the subject property, have a grade that is too high.
- c. The Petitioner did not introduce probative evidence about specific features that would be relevant to grade of her property. She also failed to introduce probative evidence that would quantify her property as D+2.

- d. A taxpayer cannot simply point to alleged deficiencies in a building and expect to make a prima facie case as to grade or any other issue. *Indian Industries v. Dep't of Local Gov't Fin.*, 791 N.E.2d 286 (Ind. Tax 2003) (citing *Miller Structures v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 953 (Ind. Tax 2001)). In this case, Petitioner did not even do that much. There is no probative evidence that would indicate the grade on Petitioner's property is wrong or what the correct grade should be.
- e. No grade change is appropriate in this case.

Condition

- f. The Petitioner contends that her assessment is inequitable because the condition is incorrect when compared to comparable properties.
- g. The comparable units, all built in 1982 or 1983, appear from the photographs to be in similar, average condition. Of the fourteen units, twelve are rated average, one is rated fair and the subject is rated good.
- h. The subject property appears to be maintained in a manner that is similar to the majority of structures. Though the photographs do not give an indication as to the interior condition of the properties, the property record cards show similar amenities and utility among all these properties. There is no evidence that the subject property is in a better location than the other properties.
- i. Furthermore, all of the properties Respondent offered as comparables are listed as average condition.
- j. The evidence proved that the subject property should be rated average, the same as the majority of the comparable dwellings. For reasons explained later in this opinion, however, the condition issue itself does not result in a change in the assessment.

Obsolescence

- k. The Petitioner submitted sixteen property record cards as comparables. Every "C" grade unit in average condition has a 45 percent obsolescence factor applied, apparently to lower the remainder value to an appropriate market value. The Petitioner contends the assessed value is inequitable because a lower obsolescence factor applied to her property.
- l. The subject property currently has a 20 percent obsolescence factor figured into the assessment. Petitioner presented no probative evidence that justifies that factor or any increase to that factor. Similarly, Petitioner presented no probative evidence regarding the basis for the 45 percent obsolescence factor on the comparables. Those other properties are not part of this appeal and there is nothing the Board can do about the obsolescence on those other properties within the context of this appeal, regardless of whether or not that obsolescence is appropriate. Petitioner simply

offered the conclusory opinion that her property should also be given 45 percent obsolescence. She failed to prove any cause of obsolescence or to quantify it. Therefore, no change should be made based on obsolescence. *Meridian Towers*, 805 N.E.2d at 478; *Clark v. State Bd. of Tax Comm'rs*, 742 N.E.2d 46, 51 (Ind. Tax Ct. 2001).

Garage Size and Type

- m. Petitioner presented evidence regarding several neighboring properties that she claims are identical in size. Her exhibits, however, do not support that opinion. The separate listings for each garage and each living area vary in square footage and dimensions from one property to another. The photographs attached to the property record cards show that each unit is one half of what appear to be similar two-unit structures. The Respondent confirmed that errors in measuring or estimating the depth and/or width of each garage area might have occurred, but the evidence does not establish exactly where or what those errors are. Errors with the measurements of other garages, however, are not relevant to what Petitioner's assessment should be.
- n. Significantly, Petitioner agreed that the dimensions of the garage area recorded for her unit are correct. Her garage has 308 square feet and her living area has 1,157 square feet. Only the subject property is under appeal. Corrections, if made, would affect only the subject property. No probative evidence has established a basis for changing the measurements of the Petitioner's garage or living area.
- o. The Petitioner contends that all the garages (hers and the comparables) should be assessed as integral garages not attached garages. It could be said that the biggest distinction between attached garages versus integral garages is that one characteristic of an attached garage is "measurable dimensions" and one characteristic of an integral garage is "dimensions that are not easily measurable from the exterior." GUIDELINES, ch. 3 at 13.
- p. The subject parcel is the only parcel under appeal and the subject assessment is the only one that will be corrected. The Petitioner confirmed that the dimensions of the subject garage are correct as listed. Therefore, the question of whether Petitioner's claim that the garage is "attached" or "integral" has no real significance. The method for assessing an integral garage provides an alternative when it is difficult to get exact measurements. Petitioner agreed that the measurement of her garage is correct. The record in this case does not establish any reason to change the garage from attached type to integral type.

Comparable Assessed Values

- q. The Petitioner believes all of the units should be valued at \$37,300 based on parcel 46-0594-0042 (Petitioner Exhibit 1). While most of the units have the same features, there are a few differences in plumbing fixtures, fireplaces, and air-conditioning. Petitioner's argument and evidence has disregarded those differences. The Petitioner

based her calculation of assessed value on the property with the lowest assessed value of all her alleged comparables, even though that property is not the standard for the neighborhood. There is no probative evidence that supports Petitioner's opinion. Such opinions have no probative value. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that conclusory statements do not qualify as probative evidence).

- r. Nevertheless, Petitioner and Respondent offered two properties as comparables that are the same. They are identified as parcels 001-25-46-0594-0002 and 001-25-46-0594-0015. The information on the property record cards for those two parcels provides further support for the claims of comparability. The improvement values for those properties are \$33,500 for one and \$34,800 for the other. Considered together, those comparables indicate that the assessed value of Petitioner's improvement is \$34,100.
- s. Making the change based on comparable assessments renders the grade, condition, obsolescence, and specific garage issues moot.

Conclusions

- 16. The Petitioner has established a prima facie case for change of her assessment. The land value was not disputed and remains at \$9,400. The improvements value should be changed to \$34,100. The total assessed value for this property is \$43,500.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the total assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.